CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 814

THE STATE TAX COMMISSION OF UTAH,
PETITIONER,

vs.

MALCOLM P. ALDRICH AND MARY S. HARKNESS,
ADMINISTRATORS WITH THE WILL ANNEXED
OF THE ESTATE OF EDWARD S. HARKNESS,
DECEASED

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF UTAH

PETITION FOR CERTIORARI FILED DECEMBER 24, 1941.

CERTIORARI GRANTED JANUARY 12, 1942.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No.

THE STATE TAX COMMISSION OF UTAH,
PETITIONER,

vs.

MALCOLM P. ALDRICH AND MARY S. HARKNESS, ADMINISTRATORS WITH THE WILL ANNEXED OF THE ESTATE OF EDWARD S. HARKNESS, DECEASED

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF UTAH

INDEX.

	Original	Print
Record from Third Judicial District Court, Salt Lake County, Utah	1	1
Complaint	1	1
Answer of the State Tax Commission of Utah	9	8
Answer of Union Pacific Railroad Company	13	12
Reply	15	13
Stipulation of facts	16	13
Memorandum of decision	18	15
Stipulation waiving findings of fact and conclusions of law and for entry of judgment	19	16
Declaratory judgment and decree	20	17
Notice of appeal	23	19
Proceedings in Supreme Court of Utah	24	20
Statement of errors	24	20
Opinion, Larson, J.	25	20
Opinion, Pratt, J., concurring in result	26	25
Judgment	27	26
Order denying petition for rehearing	28	26
Praecipe for record	29	27
Clerk's certificate (omitted in printing)	31	

Order allowing certiorari 28

[fol. 1]

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF UTAH IN AND FOR THE COUNTY OF SALT LAKE

MALCOLM P. ALDRICH and MARY S. HARKNESS, Administrators with the will annexed of the Estate of Edward S. Harkness, Deceased, Plaintiffs,

against

STATE TAX COMMISSION OF UTAH and UNION PACIFIC RAILROAD COMPANY, a Corporation, Defendants

COMPLAINT

Come now the plaintiffs above named and for cause of action against the defendants and each of them allege:

First Cause of Action

1. Edward S. Harkness died on the 29th of January, 1940 and at the time of his death was an actual and bona fide resident of and domiciled in the State of New York.

2. Said decedent left a last will and testament which was admitted to probate on the 15th day of March, 1940 in the Surrogate's Court of New York County, State of New York, and on said date plaintiffs were by said Surrogate Court appointed executors of the last will and testament of said decedent and thereupon qualified as such and ever since said date have been and now are the duly appointed, qualified and acting executors of the last will and testament of said decedent.

3. On the 28th day of August, 1940, plaintiffs were appointed administrators with the will annexed of the estate of said decedent by the Third Judicial District Court of the State of Utah in and for Salt Lake County and ever since said date have been and now are the duly appointed, qualified and acting administrators with the will annexed of the estate of said decedent.

4. The defendant State Tax Commission of Utah is an [fol. 2] administrative body created by the statutes of the State of Utah with power and authority to sue and be sued.

Said defendant is by said statute required to collect and pay over to the State Treasurer all inheritance taxes due to the State of Utah under the provisions of Chapter 12, Revised Statutes of Utah 1933 as amended, and to prosecute actions at law for the collection of such taxes and to enforce and foreclose any liens securing payment of such taxes and to release and discharge any such liens.

5. The defendant Union Pacific Railroad Company is a corporation organized and existing under and by virtue of the laws of the State of Utah.

The executive offices of said Railroad Company are and for many years have been located in the State of New York. The meetings of the Board of Directors and of the Executive Committee of said Board are now and for many years have been held in the State of New York. An annual meeting of the stockholders of said Railroad Company has been held within the State of Utah in May of each year.

The only office for the transfer of shares of its stock maintained by said Railroad Company is and has for many years been continuously located in the State of New York where its stock books and stock records are and have been kept. The shares of stock of said Railroad Company are not, and for many years have not been, transferable upon the books of the Company within the State of Utah.

The said Railroad Company operates railroad lines in thirteen states, including railroads leased from companies all or substantially all of whose capital stock is owned by it. During 1939 the railway operating revenue both from Utah intra-state business and the Utah proportion, on a mileage basis of inter-state business was 8.97% of the entire gross railway operating revenue of said Railroad Company. Upon information and belief, the relation between the revenue within the State of Utah and the total revenues of said Railroad Company continued to be approximately the same in January, 1940 as the relation hereinbefore alleged for the year 1939. The number of miles of tracks operated by the Railroad Company in the State of Utah is and in January 1940 was less than 9% of its total operated miles of tracks in all States.

6. At the time of his death decedent was the owner of [fol. 3] 10,000 shares of common stock and 400 shares of

preferred stock of the defendant Union Pacific Railroad Company, standing in the name of said decedent on the books of said defendant Union Pacific Railroad Company. Said shares of stock were at the time of the death of said decedent and now are of the fair market value of more than $10,000.00.

7. Decedent never at any time had his domicile in the State of Utah nor was he at any time a resident of said State. Decedent never at any time conducted or carried on any business in said State. The certificates representing said shares of stock were never within the State of Utah and were in the possession of said decedent in the State of New York at the time of his death and are now there in the possession of plaintiffs as executors of the will of said decedent.

8. The defendant State Tax Commission of Utah claims and asserts that the transfer of said shares of stock from said decedent as a result of his death is subject to the inheritance taxes imposed by the provisions of Chapter 12, Revised Statutes of Utah 1933 as amended and that said shares of stock are subject to the lien securing the payment of such inheritance taxes.

Said Chapter 12, Revised Statutes of Utah 1933 as amended provides:

"80-12-2

"Amount of tax on net estate.—A tax equal to the sum of the following percentages of the market value of the net estate shall be imposed upon the transfer of the net estate of every decedent, whether a resident or non-resident of this state:

Three per cent of the amount by which the net estate exceeds $10,000 and does not exceed $25,000;

Five per cent of the amount by which the net estate exceeds $25,000 and does not exceed $75,000;

Eight per cent of the amount by which the net estate exceeds $75,000 and does not exceed $125,000;

Ten per cent of the amount by which the net estate exceeds $125,000; provided, at the discretion of the tax commission, the taxpayer may choose to pay in kind on an estate or any portion thereof which is not liquid. (L. 19, p. 167, § 3185; L. 1935, Chap. 88, § 1, approved March 23, 1935, effective July 1, 1935.)"

"80-12-24

"'Lien of tax.—The tax herein provided for shall be and remain a lien on the property liable therefor from the death of the decedent until paid. (L. 19, p. 167, § 3185.)"

Said Chapter 12, Revised Statutes of Utah 1933, as [fol. 4] amended, provides for no credit against the tax thereby imposed for any tax imposed upon the transfer by any Nation, other State or political subdivision.

9. The defendant Union Pacific Railroad Company claims and asserts that it is unable to determine whether such transfer is subject to said inheritance taxes and asserts that it cannot transfer said shares of stock on its books to the legatees under the will of said decedent or to any assignees of said shares of stock without subjecting itself to suit by the State Tax Commission of Utah for the collection of such inheritance taxes and that it will incur large expenses in defending said suit. Accordingly, the defendant Union Pacific Railroad Company has refused to make any transfer of said shares of stock on its books until a judicial determination has been made as to whether such transfer is subject to said inheritance taxes.

10. The plaintiffs as executors of the will of said decedent have paid to the State of New York a tax upon the transfer of said shares of stock incident to the death of said decedent, based upon the full value thereof, as required by the laws of the State of New York. Section 249-0 of Article 10-C of the Tax Law of the State of New York, in effect on January 29, 1940 but repealed on March 10, 1940, allowed as a credit against the estate tax imposed by said Article the amount of any constitutionally valid estate or inheritance tax paid to any other State within three years after the decedent's death.

The State Tax Commission of New York claims and asserts that an estate or inheritance tax imposed by another state upon shares of stock of a corporation incorporated therein forming a part of the estate of a decedent domiciled in the State of New York is not a constitutionally valid tax and that no credit for the amount of any such tax is allowable against the estate tax payable to the State of New York.

11. The plaintiffs allege and assert that the transfer of said shares of stock incident to the death of said decedent is

not subject to the inheritance taxes imposed by said Chapter 12 as amended, or to any inheritance taxes of the State of Utah, and that said shares of stock are not subject to any lien securing the payment of any such inheritance taxes. Plaintiffs further assert and allege that the decedent, at the time of his death, did not own or have any interest in any property located in the State of Utah and that said shares of stock were never at any time located or had any [fol. 5] situs in the State of Utah and that the State of Utah has no power or jurisdiction to levy or assess or collect any inheritance taxes upon said shares of stock or the transfer thereof incident to the death of said decedent.

12. Plaintiffs further assert and allege that said Chapter 12 as amended is unconstitutional and void as applied to the transfer of said shares of stock incident to the death of said decedent and that the enforcement of said chapter as amended will deprive the plaintiffs and the beneficial owners of said stock of their rights and property therein without due process of law and will deprive them of equal protection of the laws, all contrary to the provisions of Sections 7 and 24 of Article I of the Constitution of the State of Utah and of the Fourteenth Amendment to the Constitution of the United States of America.

13. Plaintiffs further allege that it is necessary to determine and settle the controversy existing between them and the defendants with respect to the constitutionality of said Chapter 12 as amended as applied to the transfer of said shares of stock incident to the death of said decedent to enable the plaintiffs to perform and discharge their duties as executors of the will of said decedent and to administer said stock and to collect and receive the dividends to become due thereon and to transfer the same to the legatees under the will of said decedent or to such other persons as may become entitled thereto in the course of administration of said decedent's estate.

Wherefore, plaintiffs pray for judgment and decree as hereinafter stated.

Second Cause of Action

For a further and additional cause of action against defendants and each of them plaintiffs allege:

1. Plaintiffs reallege paragraphs 1 to 8 inclusive and paragraph 10 of the first cause of action.

2. The defendant State Tax Commission has notified the defendant Union Pacific Railroad Company that the transfer of said shares of stock by the death of said decedent is subject to the inheritance tax imposed by said Chapter 12, as amended, and that said shares of stock are subject to a lien securing payment of such taxes and has notified and [fol. 6] directed the defendant Union Pacific Railroad Company not to transfer said shares of stock on its books when requested so to do by the plaintiffs, by their assignees, or by the beneficial owners of said stock.

3. Prior to the commencement of this action the plaintiffs presented to said defendant Union Pacific Railroad Company at its transfer office in the State of New York the certificates representing said shares of stock, duly endorsed, and requested said Railroad Company to transfer said shares of stock on its books to the persons designated by the plaintiffs but said defendant Railroad Company has refused and still refuses to do so and has notified plaintiffs that it will continue to refuse until it is finally determined by a binding decree of court that the transfer of said stock incident to the death of said decedent is not subject to any inheritance taxes mentioned in said Chapter 12, as amended.

4. The transfer of said shares of stock incident to the death of said decedent is not subject to any inheritance tax imposed by said Chapter 12 as amended, or to any inheritance taxes of the State of Utah, and is not subject to any lien to secure the payment of such taxes. The State of Utah and the State Tax Commission of Utah are without power or jurisdiction to levy or assess or collect any inheritance tax upon the transfer of said shares of stock incident to the death of said decedent. Said Chapter 12, as amended, as applied to such transfer of said shares of stock, is unconstitutional and in conflict with the provisions of Sections 7 and 24 of Article I of the Constitution of the State of Utah and of the Fourteenth Amendment to the Constitution of the United States of America. Enforcement of said Chapter 12, as amended, with respect to the transfer of said shares of stock by the death of said decedent, will deprive the plaintiffs and the beneficial owners of said stock of their rights and property therein without due process of law and will deny them equal protection of the laws, all in violation of said provisions of the Constitution

of the State of Utah and of the Fourteenth Amendment to the Constitution of the United States of America.

5. The refusal of said defendant Railroad Company to transfer said shares of stock on its books as requested by [fol. 7] the plaintiff and the claims and assertions of a lien on said stock claimed and made by the defendant State Tax Commission have rendered it impossible for the plaintiffs to sell or dispose of said shares of stock or to manage, control or administer them as required by the will of said decedent.

Wherefore plaintiffs pray for judgment and decree as follows:

On their first cause of action a declaratory judgment:

(a) That the transfer of the shares of stock above set forth incident to the death of said decedent is not subject to taxation by the State of Utah or the State Tax Commission of Utah under the provisions of said Chapter 12, Revised Laws of Utah 1933, as amended, or at all;

(b) That said Chapter 12, as amended, as applied to said transfer of said shares of stock, is unconstitutional and void and in conflict with the provisions of the Constitution of the State of Utah and of the Fourteenth Amendment to the Constitution of the United States of America;

(c) That said shares of stock are not subject to any lien or other charge in favor of the State of Utah or the State Tax Commission of Utah to secure the payment of any tax herein mentioned;

(d) That it is the duty of said defendant Union Pacific Railroad Company to transfer said shares of stock on its books to the person or persons requested by the plaintiffs without the payment of any tax herein mentioned or the presentation to it of any waiver of such tax by the State Tax Commission of Utah.

On their second cause of action a decree:

(a) Commanding and requiring the defendant Union Pacific Railroad Company to transfer on its books said shares of stock to the person or persons requested by the plaintiffs without the payment of any tax herein mentioned or the

presentation to it of any waiver of such tax by the State Tax Commission of Utah.

(b) Enjoining and restraining said defendant State Tax Commission of Utah from asserting any lien upon said shares of stock as security for the payment of any inheritance taxes and enjoining and restraining said Tax Commis-[fol. 8] sion of Utah from collecting or attempting to collect any of the inheritance taxes mentioned in said Chapter 12, as amended, upon the transfer of said shares of stock incident to the death of said decedent;

(c) Quieting and confirming the plaintiffs' title to said shares of stock against the asserted claim of lien made by the defendant State Tax Commission of Utah.

Plaintiffs pray for such other and further relief as may be proper in the premises and for their costs incurred herein.

(Signed) Sage, Gray, Todd and Sims, Van Cott, Riter and Farnsworth, Attorneys for Plaintiffs.

Duly sworn to by Malcolm P. Aldrich. Jurat omitted in printing.

[fol. 9] IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY

[Title omitted]

ANSWER OF THE STATE TAX COMMISSION OF UTAH—October 21, 1940

Comes now the defendant, the State Tax Commission of Utah, above named, and answers the complaint filed herein as follows:

First Cause of Action

I

Admits the allegations contained in Paragraphs 1, 2, 3, 4, 6, 7, 8, 9, and 13.

II

As to the allegations contained in Paragraph 5, the State Tax Commission admits the allegations contained in the first complete paragraph of Paragraph 5; admits the allega-

tions contained in the second complete paragraph of Paragraph 5, subject, however, to the reservation and contention that said allegations are wholly immaterial and irrelevant to the issues in this cause; admits the allegations contained in the first sentence of the third complete paragraph in Paragraph 5, subject, however, to the reservation and contention that said allegations are wholly immaterial and irrelevant to the issues in this cause; denies the allegations contained in the second sentence of the third complete paragraph in Paragraph 5 and alleges that although the Union Pacific Railroad Company at the present time and for many years past has kept its stock books and records in New York City and its Transfer Agent has been and now is located in New York City, nevertheless, the Union Pacific Railroad Company has the power and ability to transfer the [fol. 10] shares of stock upon the books of the corporation within the State of Utah, and to maintain its books and records with reference to transfer of shares of stock within the State of Utah; admits the remainder of the allegations contained in Paragraph 5, subject, however, to the reservation and contention that said allegations are wholly immaterial and irrelevant to the issues in this cause.

III

Admits the allegations contained in the first complete paragraph of Paragraph numbered 10; admits the allegations contained in the second complete paragraph in Paragraph numbered 10, subject, however to the reservation and contention that said allegations are wholly immaterial and irrelevant to the issues in this cause.

IV

Denies each and every allegation contained in Paragraphs 11 and 12.

V

Defendant State Tax Commission alleges that the transfer of the shares of stock in the Union Pacific Railroad Company owned by the above-named decedent as of the date of death, to wit, 10,000 shares of common stock and 400 shares of preferred stock, is subject to the inheritance tax as provided by Chapter 12, Title 80, Revised Statutes of Utah, 1933, as amended; that the total gross value of said shares of stock as of the date of death of the above-named decedent amounted to $971,500.00; that the total gross value

of the estate of the above named decedent, wherever situated, as of the date of death was $90,000,000.00; that the total amount of indebtedness for which the above-named decedent has been adjudged liable as of the date of his death was $3,000,000.00; that, therefore, in accordance with the provisions of Chapter 12, Title 80, Revised Statutes of Utah, 1933, as amended, and particularly in conformance with the provisions of Section 80-12-9, Revised Stat-es of Utah, 1933, the tax upon the transfer of said shares of stock in the Union Pacific Railroad Company owned by the above named decedent as of the date of death amounts to $88,361.68.

Second Cause of Action

I

Defendant State Tax Commission makes the same answer to Paragraphs 1 to 8, inclusive, and Paragraph 10 of the First Cause of Action, as realleged in the Second Cause of Action, as heretofore made to said allegations in its answer to the First Cause of Action.

[fol. 11]

II

Defendant State Tax Commission admits the allegations contained in Paragraphs 2 and 3.

III

Defendant State Tax Commission denies each and every allegation contained in Paragraph 4.

IV

Defendant State Tax Commission denies the allegations contained in Paragraph 5 and alleges that the refusal of the Union Pacific Railroad Company to transfer said shares of stock on its books, and the claims and assertions of a lien on said stock claimed and made by the State Tax Commission have rendered it impossible for plaintiffs to sell or dispose of said shares of stock or to manage, control or administer them as required by the will of said decedent without first paying the tax claimed by the defendant State Tax Commission for and on behalf of the State of Utah, or without first having a judicial determination of the existing controversy.

V

Defendant State Tax Commission alleges that the transfer of the shares of stock in the Union Pacific Railroad

Company owned by the above-named decedent as of the date of death, to wit 10,000 shares of common stock and 400 shares of preferred stock, is subject to the inheritance tax as provided by Chapter 12, Title 80, Revised Statutes of Utah, 1933, as amended; that the total gross value of said shares of stock as of the date of death of the above-named decedent amounted to $971,500.00; that the total gross value of the estate of the above named decedent, wherever situated, as of the date of death was $90,000,000.00; that the total amount of indebtedness for which the above-named decedent has been adjudged liable as of the date of his death was $3,000,000.00; that, therefore, in accordance with the provisions of Chapter 12, Title 80, Revised Statutes of Utah, 1933, as amended, and particularly in conformance with the provisions of Section 80-12-9, Revised Statutes of Utah, 1933, the tax upon the transfer of said shares of stock in the Union Pacific Railroad Company owned by the above named decedent as of the date of death amounts to $88,361.68.

[fol. 12] Wherefore, This Defendant Prays: (1) For Judgment determining and deciding the issues formed by the complaint and this answer; (2) For judgment and decree that the transfer of the shares of stock above referred to is subject to taxation by the State of Utah under the provisions of Chapter 12, Title 80, Revised Statutes of Utah, 1933, as amended; (3) For judgment and decree against the above plaintiffs as administrators with the will annexed of the estate of Edward S. Harkness, deceased, in the amount of $88,361.68 being the amount of inheritance tax liability due to the State of Utah from the above-entitled estate upon the transfer of said stock; (4) For a judgment and decree declaring a lien upon said shares of stock in favor of the State of Utah to secure the payment of the inheritance tax liability of the above-entitled estate to the State of Utah; (5) and for such other and further relief as to this Honorable Court may seem just and meet in the premises.

Dated this 21st day of October, A. D., 1940.

(Signed) Irwin Arnovitz, Garfield O. Anderson, Attorneys for State Tax Commission.

Duly sworn to by Kline P. Barney. Jurat omitted in printing.

Received copy of the above and foregoing Answer this 21st day of October, A. D., 1940.

(Signed) Van Cott, Riter and Farnsworth, Attorneys for Plaintiffs.

[fol. 13] IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR THE COUNTY OF SALT LAKE

[Title omitted]

ANSWER OF UNION PACIFIC RAILROAD COMPANY

Comes now the defendant above named, Union Pacific Railroad Company, a corporation, and answers the complaint as follows:

First Cause of Action

1. Admits the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 13.

2. Answering paragraphs 11 and 12, defendant Union Pacific Railroad Company admits the matters of fact therein alleged, but as to the matters of law alleges that they have not been determined by the courts and upon that ground denies the same.

Second Cause of Action

1. Admits the allegations contained in paragraphs 1, 2, 3 and 5.

2. Answering paragraph 4, defendant Union Pacific Railroad Company admits the matters of fact therein alleged, but as to the matters of law alleges that they have not been determined by the courts and upon that ground denies the same.

Wherefore this defendant prays for judgment determining and deciding the issues formed by the complaint and this answer.

(Signed) Geo. H. Smith, W. Hal Farr, Robt. B. Porter, Attorneys for Defendant, Union Pacific Railroad Company.

[fol. 14] Received copy of the foregoing answer this 11th day of October, 1940, and verification thereof is hereby waived.

(Signed) Sage, Gray, Todd & Sims, Van Cott, Riter and Farnsworth, Attorneys for Plaintiffs.

[fol. 15] IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR THE COUNTY OF SALT LAKE

[Title omitted]

REPLY

Come now the plaintiffs above named and reply to the answer of State Tax Commission of Utah as follows:

1. Replying to paragraph V of the answer to the first and second causes of action admits that the total gross value of the estate of the above named decedent, wherever situated, as of the date of his death, was $90,000,000.00 and that the total amount of indebtedness of the above named decedent as of the date of his death was $3,000,000.00. Denies each and every other allegation therein contained.

Wherefore, plaintiffs pray as set forth in their complaint.

(Signed) Sage, Gray, Todd and Sims, Van Cott, Riter and Farnsworth, Attorneys for Plaintiffs.

Received copy of the foregoing reply this 23 day of October, 1940 and verification thereof is hereby waived.

(Signed) Irwin Arnovitz (per G. O. A.), Garfield O. Anderson, Attorneys for Defendant, State Tax Commission of Utah.

[fol. 16] IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR THE COUNTY OF SALT LAKE

[Title omitted]

STIPULATION OF FACTS—October 31, 1940

The parties hereby stipulate:

First

In the third paragraph of Section 5 on page 2 of the complaint appear the following allegations:

"The shares of stock of said Railroad Company are not, and for many years have not been, transferable upon the books of the Company within the State of Utah."

The answer of the State Tax Commission of Utah responds to this allegation as follows:

"* * * denies the allegations contained in the second sentence of the third complete paragraph in Paragraph 5 and alleges that although the Union Pacific Railroad Company at the present time and for many years past has kept its stock books and records in New York City and its Transfer Agent has been and now is located in New York City, nevertheless, the Union Pacific Railroad Company has the power and ability to transfer the shares of stock upon the books of the corporation within the State of Utah, and to maintain its books and records with reference to transfer of shares of stock within the State of Utah;—"

In regard to these pleadings the parties hereby stipulate that the Union Pacific Railroad Company for many years has kept its stock books and records and transfer agents in New York City and has not had any such in Utah; but that Union Pacific Railroad Company could transfer shares of stock within the State of Utah and could maintain books and records with reference to transfer of shares of stock within the State of Utah.

[fol. 17] Second

State Tax Commission of Utah, in paragraph IV of its answer, denies each and every allegation contained in paragraphs 11 and 12, including the allegation reading as follows:

"* * * Plaintiffs further assert and allege that the decedent, at the time of his death, did not own or have any interest in any property located in the State of Utah and that said shares of stock were never at any time located or had any situs in the State of Utah—."

State Tax Commission of Utah by this denial does not intend to impair its admission of the allegations of Section 7 of the complaint. State Tax Commission of Utah by its denial of the allegation in question contends that the ownership by the decedent of stock in a Utah corporation is the ownership of property or an interest in property located in the State of Utah or having a taxable situs in the State of Utah and that by reason of the fact that Union Pacific Railroad Company was incorporated in Utah shares of stock therein have a location and a situs in the State of Utah.

Third

In Section 5 of the answer of State Tax Commission of Utah to the first cause of action and in Section 5 of its answer to the second cause of action there are affirmative allegations respecting the amounts involved in the computation of the inheritance tax alleged to be owing, some of which are denied by the plaintiff's reply. The issues thus raised do not need to be determined unless and until it is decided that the State of Utah can collect the tax in question. The parties therefore stipulate that the determination of this question shall await the determination of the question of whether the tax can be collected and that if it is finally decided that the tax can be collected the parties will submit to the jurisdiction of this court for the purpose of determining the question described.

Fourth

The case is submitted for the decision and judgment of the court upon the complaint, answers, reply and the foregoing stipulations.

Dated October 31, 1940.

(Signed) Sage, Gray, Todd and Sims, Van Cott, Riter and Farnsworth, Attorneys for Plaintiffs.

(Signed) Irwin Arnovitz, Garfield O. Anderson, Attorneys for Defendant, State Tax Commission of Utah. (Signed) Geo. H. Smith, Robt. B. Porter, W. Hal Farr, Attorneys for Defendant, Union Pacific Railroad Company.

[fol. 18] In the Third Judicial District Court in and for Salt Lake County

Malcolm P. Aldrich and Mary S. Harkness, Administrators with the Will Annexed of the Estate of Edward S. Harkness, Deceased, Plaintiffs,

vs.

State Tax Commission of Utah and Union Pacific Railroad Company, a Corporation, Defendants

Memorandum of Decision—January 23, 1941

This court is bound by the decision of the United States Supreme Court in First National Bank v. Maine, 76 L. Ed., 313, 284 U. S. 312. It is true that before that decision sev-

eral of the states had decided the question, as to whether shares of stock owned by a non-resident deceden' were properly subject to a succession tax by states where the corporation was incorporated, in the affirmative. In this state, in the case of Larson v. MacMiller, et al., 56 Utah 84, decided in 1920, while that precise question was not before the court, it appears that the defendant executors conceded the right of the State of Utah to tax such stock. However, since in First National Bank v. Maine, Supra, a federal question was involved, and since that question was decided by the Supreme Court of the United States, the courts of the several states are bound by that decision, until and unless the Supreme Court of the United States shall reach a different conclusion than that reached therein. Matter of Lagergreit, 276 N. Y., 184, 11 N. E. (2d) 722.

Judgment is, therefore, for the plaintiffs and against the defendants in accordance with the prayer of the complaint, and the stipulation of the parties, and counsel for plaintiffs is directed to prepare such decree accordingly and serve the same upon counsel for the defendants.

Dated Jan. 22, 1941.

(Signed) Clarence E. Baker, District Judge.

[fol. 19] In Third Judicial District Court in and for the County of Salt Lake

[Title omitted]

Stipulation Waiving Findings of Fact and Conclusions of Law and for Entry of Judgment—February 21, 1941

The parties hereby stipulate that Findings of Fact and Conclusions of Law are waived and the court may make and enter its Declaratory Judgment and Decree forthwith.

Dated February 21, 1941.

(Signed) Melber Chambers, W. Q. Van Cott, Attorneys for Plaintiff. (Signed) Irwin Arnovitz, Garfield O. Anderson, Attorneys for Defendant State Tax Commission of Utah. (Signed) Geo. H. Smith, Attorney for Defendant Union Pacific Railroad Company.

[fol. 20] IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF UTAH IN AND FOR THE COUNTY OF SALT LAKE

MALCOLM P. ALDRICH and MARY S. HARKNESS, Administrators with the Will Annexed of the Estate of Edward S. Harkness, Deceased, Plaintiffs,

vs.

STATE TAX COMMISSION OF UTAH and UNION PACIFIC RAILROAD COMPANY, a Corporation, Defendants

DECLARATORY JUDGMENT AND DECREE—March 24, 1941

This case came on duly for hearing October 31, 1940. Messrs. Melber Chambers of New York City and W. Q. Van Cott of Salt Lake City appeared for plaintiffs. Messrs. Irwin Arnovitz and Garfield O. Anderson of Salt Lake City appeared for defendant State Tax Commission of Utah. Mr. George H. Smith of Salt Lake City appeared for defendant Union Pacific Railroad Company. A written stipulation by all of the parties in regard to pleadings and providing for the submission of the case for decision upon the complaint, answers of defendants, reply and said stipulation was presented and pursuant to motion of all parties was ordered filed as supplementing the pleadings herein and to be made part of the judgment roll. All parties represented to the court that the only issue of fact raised by the pleadings is by virtue of the allegations contained in paragraphs V of the answer of the State Tax Commission of Utah to the first and second causes of action which alleges that the total gross value of the shares of Union Pacific stock described in the complaint as of the date of the death of the decedent was $971,500.00, which allegations are denied by the reply; that such issue should not be tried unless and until it is finally decided that the tax in question can be imposed and collected by the State of Utah; and that if it is finally so decided that this court will have continuing jurisdiction to try and determine such issue.

The parties having filed a written stipulation waiving [fol. 21] findings of fact and conclusions of law and the court being fully advised, the court hereby adjudges and decrees as follows:

For the Declaratory Judgment of the court it is hereby Adjudged:

(a) The transfer of shares of stock, set forth in the complaint, incident to the death of the decedent Edward S.

Harkness is not subject to taxation by the State of Utah or the State Tax Commission of Utah under the provisions of Section 80-12-2 Revised Statutes of Utah, 1933, as amended by Chapter 88, Laws of Utah, 1935, or at all;

(b) Said Section 80-12-2, as amended, as applied to said transfer of said shares of stock, is unconstitutional and void and in conflict with the provisions of Sections 7 and 24 of Article I of the Constitution of the State of Utah and of the Fourteenth Amendment to the Constitution of the United States of America;

(c) Said shares of stock are not subject to any lien or other charge in favor of the State of Utah or the State Tax Commission of Utah to secure payment of any estate, inheritance or transfer tax;

(d) It is the duty of defendant Union Pacific Railroad Company to transfer said shares of stock on its books to the person or persons requested by plaintiffs without the payment of any estate, inheritance or transfer tax or the presentation to it of any waiver of such tax by the said Tax Commission of Utah.

And the court hereby Decrees:

(a) Defendant Union Pacific Railroad Company is hereby commanded and required to transfer on its books the shares of stock described in the complaint to the person or persons designated by plaintiffs without the payment of any estate, inheritance or transfer tax or the presentation to it of any waiver of such tax by the State Tax Commission of Utah.

(b) The defendant State Tax Commission is enjoined and restrained from asserting any lien upon the shares of stock described in the complaint as security for the payment of any estate, inheritance or transfer taxes and is enjoined and restrained from collecting or attempting to collect any inheritance taxes provided for in Section 80-12-2, as amended, upon the transfer of said shares of stock, de- [fol. 22] scribed in the complaint, incident to the death of the decedent, Edward S. Harkness.

(c) Plaintiffs' title to the shares of stock described in the complaint is hereby quieted and confirmed against the as-

serted claim of lien made by defendant State Tax Commission of Utah.

Done in Open Court this 24th day of March, 1941.

(Signed) Clarence E. Baker, Judge.

Attest: William J. Korth, Clerk, by (Signed) C. L. Countryman, Deputy Clerk.

[fol. 23] IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY

[Title omitted]

NOTICE OF APPEAL—April 1, 1941

To the Clerk of the Above-Entitled Court, To Malcolm P. Aldrich and Mary S. Harkness, Administrators with the will annexed of the Estate of Edward S. Harkness, Deceased, And to Van Cott, Riter and Farnsworth, Their Attorneys:

You and each of you will please take notice that the State Tax Commission of the State of Utah, defendant in the above-entitled cause, hereby appeals to the Supreme Court of the State of Utah from that certain Declaratory Judgment and Decree entered in the above-entitled court and cause on the 24th day of March, 1941, in favor of the plaintiffs and against the State Tax Commission, and from the whole thereof.

Dated this 1st day of April, A. D., 1941.

(Signed) Garfield O. Anderson, Grant A. Brown, Attorneys for State Tax Commission.

Received a copy of the foregoing Notice of Appeal this 1st day of April, A. D., 1941.

(Signed) Van Cott, Riter & Farnsworth (a), Attorneys for Plaintiffs.

[fol. 24] IN SUPREME COURT OF UTAH

MALCOLM P. ALDRICH and MARY S. HARKNESS, Administrators with the will annexed of the Estate of Edward S. Harkness, Deceased, Plaintiffs,

v.

STATE TAX COMMISSION OF UTAH and UNION PACIFIC RAILROAD COMPANY, a Corporation, Defendants

STATEMENT OF ERRORS

In the Harkness case, number 6358, appellant assigns the following errors upon which it relies for a reversal of the judgment of the court below:

I

That the trial court erred in making and entering its declaratory judgment and decree, dated March 24, 1941 (R. 31-33), in favor of the plaintiff and against the defendant for the reason that the same is contrary to law.

II

That the trial court erred in making and rendering its declaratory judgment and decree, dated March 24, 1941 (R. 31-33), for the reason that the whole and every part thereof is erroneous and contrary to law.

[fol. 25] IN SUPREME COURT OF UTAH

No. 6358

MALCOLM P. ALDRICH and MARY S. HARKNESS, Administrators with the will annexed of the Estate of Edward S. Harkness, Deceased, Plaintiffs and Respondents,

v.

THE STATE TAX COMMISSION OF UTAH, Defendant and Appellant,

UNION PACIFIC RAILROAD COMPANY, Defendant

OPINION

LARSON, *Justice:*

Plaintiffs in the District Court sought a declaratory judgment holding that the transfer of stock in the Union Pacific Railroad Company, a Utah corporation, owned by Edward

S. Harkness at the time of his death be held not subject to tax by the State of Utah under the provisions of Chapter 12, Title 80, R. S. U. 1933, commonly called the Inheritance Tax. The trial court entered judgment for plaintiffs as prayed for and the defendant, State Tax Commission, appeals.

The facts were these: Edward S. Harkness died January 29, 1940, being at the time of his death domiciled in the State of New York. His estate was probated in the New York courts where plaintiffs were appointed executors of the last will and testament of the decedent. Plaintiffs were also appointed administrators with the will annexed of the estate of decedent on August 28, 1940 by the District Court of Salt Lake County, State of Utah, and are now acting in that capacity.

At the time of his death Harkness was the owner of 10,000 shares of common stock and 400 shares of preferred stock of the Union Pacific Railroad Company, a Utah corporation. The certificates representing these shares of stock were in the possession of the decedent in the State of New York, and the same certificates are now located physically in the State of New York in the possession of plaintiffs as executors of the estate of the decedent. As of the date of death these shares of stock were recorded on the books of the Union Pacific Railroad Company in the name of Edward S. Harkness. This stock, which the State Tax Commission contends is subject to tax under our Inheritance Tax Law, is the only property owned by decedent claimed to be within the jurisdiction of the State of Utah.

At the date of Mr. Harkness' death, the laws of the State of New York allowed as a credit against the estate tax imposed by the State of New York the amount of any constitutionally valid estate or inheritance tax paid to any other state within three years after the decedent's death.

The fundamental question involved in the case is stated thus: Is the transfer of stock in a corporation organized and existing under and by virtue of the laws of the State of Utah, which stock was owned by a non-resident decedent, (the certificates thereof being acquired and held outside of the State of Utah), taxable by the State of Utah under Chap-

ter 12, Title 80, R. S. U. 1933? The material portions of these sections read as follows:

80-12-2:

"A tax equal to the sum of the following percentages of the market value of the net estate shall be imposed upon the transfer of the net estate of every decedent, whether a resident or nonresident of this state • • •"

80-12-3:

"The value of the gross estate of a decedent shall be determined by including the value at the time of his death of all property, real or personal, within the jurisdiction of [fol. 25a] this state, and any interest therein, whether tangible or intangible, which shall pass to any person, in trust or otherwise, by testamentary disposition or by law of inheritance or succession of this or any other state or country, or by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after his death."

For many years taxes were collected in such cases by this and several other states. In January, 1932, the Supreme Court of the United States in First National Bank of Boston v. Maine, 284 U. S. 312, 76 L. ed. 313, 52 Sup. Ct. Rep. 174, held that shares of stocks were subject to inheritance taxes in the state of the owner's domicile and attempts to impose death duty taxes upon stocks in states other than that of the owner's domicile were void under the due process clause of the Fourteenth Amendment to the Federal Constitution. Since that decision such taxes have not been collected and it is frankly conceded that if the rule announced in that case still controls as the law, the attempt to collect the death duty taxes here involved must fail. Appellant, State Tax Commission in its brief states its position thus:

"• • • The only bar, if there be a bar at all, to the State of Utah's right and power to assess and collect the tax in question, is the Supreme Court's decision in First National Bank of Boston v. Maine.

"Because there is reason to believe that the Supreme Court has now reversed First National Bank of Boston v.

Maine, the Tax Commission is now proceeding to assess and collect the tax provided by Chapter 12, Title 80, Revised Statutes of Utah, 1933, upon all transfers of stock in Utah corporations, whether the same be owned by residents or nonresidents, where the value of the stock and other property within the State of Utah is of such an amount as to bring the estate within the taxable brackets."

Respondent defends the decision of the trial court upon the following grounds: (a) The authority of the First National Bank of Boston v. Maine stands unimpaired and is controlling upon this court; (b) The tax infringes the due process clause of the Constitution of the State of Utah; (c) The shares of stock in question are not property within the jurisdiction of the State of Utah and are consequently not within the terms of the Inheritance Tax statute. Our statute, commonly called the Inheritance Tax Law, was enacted in 1901. Provisions imposing death duty taxes upon the transfer of stock in Utah corporations even though owned by non-resident decedents have remained on the statute books without any substantial change since that time. From the time the statute became effective until the Supreme Court of the United States handed down its decision in First National Bank of Boston v. Maine, 284 U. S. 312, 76 L. Ed. 213, 52 Sup. Ct. Rep. 174, the state construed and applied the statute as including within its tax provisions stock of Utah corporations owned by non-residents. Such application of the statute was never questioned in the courts, all estates coming within the statute as so construed paying the tax without litigation. In only one case was the question here involved even indirectly before this court. In Larson v. McMillar, 56 Utah 84, 189 P. 579 under a state of facts almost identical with those in the present case, the question arose as to the method of computing the tax on the property consisting of stocks in all respects similar to those here involved. The inclusion in the taxable estate of the shares of stock in the Union Pacific Railroad, owned and held in New York by decedent, a resident of that state, was not disputed, and was assumed and recognized and applied by this court in directing a larger judgment in favor of the State Treasurer. After the decision in the case of First National Bank of Boston v. Maine, supra, holding a tax such as that here involved to be in violation of the Fourteenth Amendment to the Federal Constitution, the attor-

ney general who under the statute had been the collector of inheritance or estate taxes ceased, and advised the State Tax Commission as his successor as collector of death duty taxes to cease collecting the taxes on stock in Utah corporations owned by non-residents, because of that decision. It is clear therefore that the only reason the State Tax Commission ceased to insist upon, and to enforce its right to collect such taxes is the decision of the United States Supreme Court in the First National Bank of Boston v. Maine, supra.

Have the later decisions of the United States Supreme [fol. 26] Court, as exemplified by Curry v. McCanless, 307 U. S. 357, 83 L. Ed. 371, 59 Sup. Ct. Rep. 900, overruled the decision in First National Bank of Boston v. Maine, supra? It is true that Mr. Justice Stone, now Chief Justice, in writing the opinion of the court in Curry v. McCanless uses much the same arguments, reasoning, and rationale that he used in the dissenting opinion in the First National Bank of Boston v. Maine case. But the Curry v. McCanless case involved a peculiar trust arrangement, part of the rights of which were situated in each of two states, whereas the First National Bank of Boston v. Maine case involved a tax on corporate stock. In no case, as far as we know, since National Bank v. Maine has the Supreme Court been asked to review or pass upon the question decided in that case. We assume that had the court felt the occasion for overruling or modifying the holding of that case as to taxation of corporate stock under death duty statutes it would not have hesitated to do so in positive language. In the Curry v. McCanless case the court was not unmindful of the First National Bank of Boston v. Maine holding. It referred to the opinion, cited it as authority for what it does hold, and then refused to extend the doctrine there announced as to stocks to cover trusts such as involved in the Curry v. McCanless case. The court said:

"The doctrine, of recent origin, that the Fourteenth Amendment precludes the taxation of any interest in the same intangible in more than one state has received support to the limited extent that it was applied in Farmers' Loan & Trust Co. v. Minnesota, 280 U. S. 204, 50 S. Ct. 98, 74 L. Ed. 371, 65 A. L. R. 1000; Baldwin v. Missouri, 280 U. S. 586, 50 S. Ct. 436, 74 L. Ed. 1056, 72 A. L. R. 1303; First National Bank v. Maine, 284 U. S. 312, 52 S. Ct. 174, 76 L. Ed. 313, 77 A. L. R. 1401. Still more recently this

Court has declined to give it completely logical application. It has never been pressed to the extreme now urged upon us, and we think that neither reason nor authority requires its acceptance in the circumstances of the present case."

It matters not what our personal opinions may be in the matter. The question being one under the federal constitution, the opinion of the Supreme Court of the United States is controlling. It having in the case of First National Bank of Boston v. Maine, supra, declared corporate stock under circumstances such as here involved to be subject to inheritance taxes only in the state of decedent's domicile, we must follow that ruling until the court which announced it shall overrule it.

It follows therefore that the attempt to impose inheritance taxes upon the stocks involved in this action is void as infringing the due process clause of the fourteenth amendment to the federal constitution under the holding in First National Bank of Boston v. Maine. The decision of the trial court is affirmed. Respondents to recover costs.

We Concur:

David W. Moffat, Chief Justice, James H. Wolfe, Justice, Roger I. McDonough, Justice.

CONCURRING OPINION

PRATT, *Justice*: (concurring in result)

I concur in affirming the decision of the lower court. My reasons are these:

Our inheritance tax is a tax upon the exercise of the right to transmit property from a decendent. State Tax Commission v. Backman, 88 Utah 424, 55 P. (2d) 171. In that case this court said that such a right of transmission is a creature of statute; and that the state granting the right may impose conditions upon its exercise. In other words the tax is not upon the exercise of a right granted by another state; but upon the exercise of a right granted by this state.

In the present case, the right of transmission is granted by a state other than Utah; and, not only that, but the exercise of that right occurs in that other state. The successful transmission of decedent's interest in the corporation to the heirs or legatees is not contingent upon any law of this state. Utah has not conferred the benefits of that

right of transmission. It is not inconceivable that the laws of another state may provide a succession different from the laws of Utah. The right of transmission granted by another state is not one and the same thing as that granted by this state.

There may be some value in the shares of stock attributable to the fact that the incorporation of the Union Pacific Railroad is in Utah, and that some of its tangible property is here, but the exercise of the right of transmission of those shares from decedent to the heirs or legatees is not contingent upon value. Our inheritance tax is not a tax upon decedent's property, be that property what it may; and be its value attributable to whatever cause.

Such sections as 80-12-3 (quoted in the prevailing opinion) fix the method of determining the amount of the tax.

[fol. 27] IN SUPREME COURT OF UTAH

MALCOLM P. ALDRICH and MARY S. HARKNESS, Administrators with the will annexed of the Estate of Edward S. Harkness, deceased, Plaintiffs and Respondents,

v.

THE STATE TAX COMMISSION OF UTAH, Defendant and Appellant, UNION PACIFIC RAILROAD COMPANY, Defendant

JUDGMENT—September 17, 1941

This cause having been heretofore argued and submitted, and the court being sufficiently advised in the premises, it is now ordered, adjudged, and decreed that the judgment of the district court herein be, and the same is, affirmed. Respondents to recover costs.

[fol. 28] IN SUPREME COURT OF UTAH

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—Oct. 24, 1941

On consideration of the Petition for Rehearing heretofore filed herein and of the arguments of counsel thereupon had, it is ordered that a rehearing be, and the same is, denied.

[fol. 29] IN SUPREME COURT OF UTAH

[Title omitted]

PRAECIPE FOR RECORD—October 24, 1941

To Mr. L. M. Cummings, Clerk of The Supreme Court of The State of Utah:

You are hereby requested to make a transcript of the record in the above-entitled cause, to be filed in the Supreme Court of the United States pursuant to a petition for Writ of Certiorari, and to include in such transcript of record as follows:

1. Complaint filed in the Third Judicial District Court of the State of Utah, in and for Salt Lake County.
2. Answer of defendant, State Tax Commission of Utah.
3. Answer of defendant, Union Pacific Railroad Company.
4. Reply of plaintiff to answer of defendant, State Tax Commission of Utah.
5. Stipulation in the Third Judicial District Court in and for Salt Lake County, dated October 31, 1940.
6. Memorandum of decision of the Third Judicial District Court of the State of Utah, in and for Salt Lake County.
7. Stipulation dated February 21, 1941, waiving Findings of Fact and Conclusions of Law.
8. Declaratory judgment and decree of the Third Judicial District Court of the State of Utah, in and for Salt Lake County.
9. Notice of Appeal of State Tax Commission.
10. Statement of errors from Page 5 of Appellant's brief.
[fol. 30] 11. Decision of the Supreme Court of the State of Utah, dated September 17, 1941.
12. Judgment of the Supreme Court of the State of Utah, dated September 17, 1941.
13. Minute entry showing filing of Petition for rehearing.
14. Order of the Supreme Court of the State of Utah denying petition for rehearing.
15. Praecipe for transcript of record.

Said transcript of record is to be prepared as required by law and the rules of this Court and the rules of the Supreme Court of the United States, concerning appeals from decisions of state courts, and to be immediately filed in the

office of the Clerk of the Supreme Court of the United States in Washington, D. C.

Dated this 24th day of October, A. D., 1941.

(Signed) Garfield O. Anderson, J. Lambert Gibson, Counsel for Defendant-appellant.

Service of the above Clerk's praecipe for transcript of record is acknowledged this 24th day of October, 1941, and it is hereby stipulated that the foregoing list may constitute the entire transcript of the record in the above entitled cause to be filed in the Supreme Court of the United States.

(Signed) Van Cott, Riter and Farnsworth, Sage, Gray, Todd & Simms, Counsel for Respondents.

[fol. 31] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 32] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 12, 1942

The petition herein for a writ of certiorari to the Supreme Court of the State of Utah is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Roberts took no part in the consideration and decision of this application.